

Virginia Department of Professional and Occupational Regulation
Frequently Asked Questions Regarding the
Regulation of Professions/Occupations

How does a profession or occupation become regulated by the state?

Section 54.1-100 of the Code of Virginia states that the Constitution of the U.S. and the Constitution of the Commonwealth of Virginia give citizens the right to engage in any lawful profession, trade or occupation. The Commonwealth may regulate entry into a profession or occupation when it is found that some police powers are necessary to protect the health, safety and welfare of the public.

Regulation of a profession or occupation must be enacted into law. There are two ways in which legislation creating a regulatory program could become law.

1) A member of the General Assembly could introduce legislation creating a regulatory program for a profession or occupation. No study would be conducted.

2) A member of the General Assembly could introduce a legislative study regarding the need for regulation of a profession or occupation. If the General Assembly and the Governor approve the study resolution, the Board for Professional and Occupational Regulation (BPOR) would conduct the study. The BPOR is a nine-member board appointed by the Governor. Section 54.1-310 gives the BPOR the authority to determine whether the public interest requires that a profession or occupation be regulated. The BPOR would conduct public hearings, receive written comments and use the criteria set forth in Section 54.1-311.B to determine the need for regulation. The findings of the study and the BPOR's recommendation would be submitted to the Governor and the General Assembly when next convened.

In both instances, legislation would be introduced and assigned to a legislative committee. The legislative process allows for public comment at the committee hearing. If the committee reports the legislation, it would proceed to the full legislative house of origin. If the house of origin adopts the bill, the bill would go to the other house where again it would be reviewed in committee. If the bill passes both houses, it is sent to the Governor. Legislation signed by the Governor becomes law. Newly enacted laws are effective July 1 of the year in which the legislation was introduced unless the bill establishes a different enactment date. The creation of a new regulatory program would most likely include an enactment clause to allow time for the promulgation of regulations.

What are the types of regulation that can be imposed?

Section 54.1-311 outlines the different levels of regulation. The most common are registration, certification and licensing which are defined in Section 54.1-300.

Registration is used when it is necessary to determine the impact sustained by the public from the operation of a profession or occupation. Registration allows any person to engage in an occupation, but may require information concerning the location, nature and operation of the practice to be submitted to the regulatory authority.

Certification is a voluntary program. The state may grant a designation of professional competence in order that the public may have a substantial basis for relying on the services of a practitioner. A regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation. Practitioners who want to be "state certified" would be required to meet such requirements as determined by the law or regulations. Regulatory boards are given the authority to impose monetary penalties, revoke, suspend or fail to renew a certificate for just causes as enumerated in their regulations.

Licensure means that a person may not practice a profession or occupation without meeting education, experience or examination requirements established for the practice of the profession or occupation. Regulatory boards are given the authority to impose monetary penalties, revoke, suspend or fail to renew a license for just causes as enumerated in their regulations. A Public Accountant who receives his certificate is deemed to have been licensed.

What is the authority of a regulatory board?

The legislation establishing a regulatory program for a profession or occupation may also establish a regulatory board to oversee the program. A regulatory board, unless otherwise specified by law, consists of at least five members. Two of the board members shall be citizen members and the remainder shall be practitioners of the profession or occupation regulated (Section 54.1-200). The powers and duties of regulatory boards (Section 54.1-201) includes the promulgation of regulations which establish the qualifications for certification or licensure and the authority to levy and collect fees for certification and licensure. The regulatory board also receives complaints regarding the conduct of a licensee or certificate holder and has the authority to impose monetary penalties, revoke, suspend or fail to renew a license or certificate for just causes as enumerated in the regulations. The Department of Professional Occupational Regulation provides staff to each regulatory board.

How are the fees established for a regulatory program?

A regulatory program's revenue is provided through fees collected from regulants, and is used to pay the costs of operating the program. Estimates of direct board expenditures are developed based on the resources required to operate the program, such as staff, equipment, systems, board activities, and regulatory operations. Other operating costs are determined based on projected number of regulants and activity levels for enforcement and examination activities. Fee amounts are determined for each type of application, renewal, examination, or other regulatory fee, that in total will provide revenue that is sufficient, but not excessive, for the program's total operating and support costs. The proposed fees are included in the

regulations which are promulgated in accordance with the Administrative Process Act (Section 9-6.14:1 et seq.) and public comments are received before the board adopts the fees and regulations.

What is the difference between the law and the regulations?

The law establishes the regulatory program, establishes the regulatory board and its authority, defines the occupation or profession being regulated and may outline any licensing exemptions, etc. The regulations outline the process for registration, certification or licensure, establish the entry requirements (education, experience and/or examination), outline prohibited acts, etc. The regulations are promulgated in accordance with the Administrative Process Act (Section 9-6.14:1 et seq.). The regulations shall not be in conflict with the purposes and intent of the enabling statute.